

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON, OHIO

ELWOOD H. JONES

Petitioner

Case No. 1:01-cv-564

v.

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

MARGARET BAGLEY, Warden,

Respondent.

**Elwood H. Jones's Memorandum Opposing
Respondent's Motion to Strike (Dkt. 112)**

The Government seeks to prevent three groups from testifying, the Coroner's Office, the two prosecutors, and the Blue Ash Police officer.

The only reason for calling the Coroner's Office is to establish the authenticity of the report of the victim's hepatitis. If the Government is now willing to accept that this is a report secured from the Coroner, based upon prior counsel's affidavit in Dkt. 20, then we do not need to call the Hamilton County Coroner.

If the government feels that the presence of the government prosecutors will not enhance their credibility, then we have no problem relying on their depositions.

The central premise behind the government's argument is that witnesses are not mentioned in the motion for evidentiary hearing. However, missing from this motion is any legal authority supporting this claim. Nothing that present counsel is aware of requires such a process. The order of this court did not require disclosure of witnesses nor has the government requested such an order. We recognize that we do not have the depositions of the proposed witnesses;

however, this will not be the first time that we have examined police officers without the benefit of a deposition. We do have access to the report from the trip to New York for the interviews of the victim's family, which is attached to our motion discovery motion.

We seek the testimony Blue Ash officers involved in the meeting with the family in New York. The interviews contradict what is now being asserted in the recently filed motion to expand the record.¹

Thus, this Court should deny the motion to strike.

Respectfully Submitted,

s/ Michael L. Monta

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¹ Attached is a copy of the report from the Blue Ash Police Department records provided in discovery, BAPD 430-32.

Certificate of Service

I, Gary W. Crim, counsel for Elwood H. Jones, certify that on August 5, 2007, I served a copy of this Memorandum Opposing Respondent's Motion to Strike (Dkt. 112) on Counsel for the Warden, Sarah A. Hadacek and Stephen E. Maher, by emailing it to shadacek@ag.state.oh.us; smaher@ag.state.oh.us.

s/Gary W. Crim
GARY W. CRIM